



DER--LOCALLY, GLOBALLY: THE POSSIBILITIES OF LAW

SYLLABUS AND MATERIALS

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VOLUME I

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These materials build on those created by Professors Judith Resnik and Vicki Jackson (of Georgetown University Law Center) for their class, Gender – Locally, Globally (Spring 2004, Yale Law School). This version was prepared with the help of Paige Herwig, Yale Law School Class of 2006.



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I: LAW AND GENDER INEQUALITIES

Equality as a Topic of Law, Inequality as a Lived Experience

When and how did issues of gender inequality emerge as a topic for lawmaking? What kinds of measures were put into place with what level of generality? How do different countries' legal systems express commitments to equality?

As you read:

- 1) Reflect upon the kinds of inequality presented in the readings. What are the sources of inequality? What role does and could laws play in alleviating the conditions of inequality? What forms of inequality are tolerated despite such provisions?
- 2) What levels of generality in legal documents are appropriate to bring about more gender equality? Consider the desirability of targeted provisions as contrasted with general statements of equality for all persons.

For Class 1 read:

1. Textual Commitments to Equality in the United States

a. The National Level

Thirteenth (ratified, 1865), Fourteenth (ratified, 1868), Fifteenth (ratified, 1870), and Nineteenth (ratified, 1920) Amendments to the United States Constitution.

b. Aspirations for the National Level

The Declaration of Sentiments, Seneca Falls Conference (1848), *in* Elizabeth Cady Stanton, 1 A HISTORY OF WOMAN SUFFRAGE 70-71 (1889).

Proposed Equal Rights Amendment, U.S. Constitution (drafted, 1923, passed Congress, 1972, ratification deadline passed 1982), *reprinted from* <http://www.now.org/issues/economic/eratext.html>; H.J. Res. 37 (reintroducing it to the House, 108th Congress, March 12, 2003), *reprinted from* <http://thomas.loc.gov>; S.J. Res. 11 (reintroducing it to the Senate, 108th Congress, First Session, March 18, 2003), *reprinted from* <http://thomas.loc.gov>.

c. In the States

Text of States' Equal Rights Amendments (1890-1970s), *in* Paul Benjamin Linton, *State Equal Rights Amendments: Making a Difference or Making a State*, 70 TEMPLE L. REV. 907 (1997).

California State Constitution §§ 1, 7, 8, 21, 24, 28.

Darryl McGrath, *Six State Constitutions Use Gender-Neutral Wording*, WOMEN'S

2. Other Nations' Textual Constitutional Commitments to Equality

Canadian Charter of Rights and Freedoms, §§ 1, 7, 15-28 (1982).

Constitution of Germany (1949), see art. 3(2) (1998).

Japanese Constitution, arts. 14, 24, 26 (1946).

Constitution of the Republic of South Africa, Preamble, §§ 7-16, 25-31, 36-38, 187 (1996).

Law of Administration for the State of Iraq for the Transitional Period (Mar. 8, 2004), *available at* <http://www.cpa-iraq.org/government/TAL.html> (read Articles 1-23, 30-31).

Larry Rohter, *Brazil Passes Equal Rights for its Women*, N.Y. TIMES, Aug. 19, 2001, at 4.

Note: Text requires context, which will come in later classes. Focus for this introductory session on the various wordings of equality commitments, and note the time when the given provision was written. What are the various terms used? What turns on the variation? Where you in a country that lacked any provisions in a constitution for equal treatment of women and men, would you want an express commitment framed to address gender? If so, what formulation would you champion?

3. Experiences of Inequality

U.S. Department of Labor, Bureau of Labor Statistics, HIGHLIGHTS OF WOMEN'S EARNINGS IN 2002, selections (September 2003), *available at* <http://www.bls.gov/cps/cpswom2002.pdf>.

United Nations Population Fund, *The Cairo Consensus at Ten: Population, Reproductive Health and the Global Effort to End Poverty*, THE STATE OF WORLD POPULATION 2004, Introduction & Ch. 5 (2004).

Virginia Woolf, excerpts from A ROOM OF ONE'S OWN 35-41, 108-118 (1929 Harcourt, Brace & World, Inc., ed. 1957).

Pennsylvania Women Suffrage Association, "Votes for Women a Success: the Map Proves It" (early 20th century).

Compare the textual commitments to equality and the descriptions of inequality detailed above. What accounts for the variance? What interventions would be most useful? Where does law fit within the spectrum of methods to dislodge inequality? Or, why does Virginia Woolf advise that as between five hundred pounds a year or the vote, she would prefer the money?

For Class 2 [February 7] read:

B. International/Transnational Law: The Example of CEDAW

In this session, we begin considering transnational efforts to address inequality and the interaction between claims of universal rights-holding and claims of rights to cultural specificity, history, and tradition. The Convention to Eliminate All Forms of Discrimination Against Women (CEDAW) is the prime example.

As you read:

- 1) Why have a separate convention for “women” as contrasted to using the other conventions? How do we assess the desirability of a universal convention for women as contrasted with general conventions like the International Convention on Civil and Political Rights?
- 2) Consider the legal status of CEDAW and the other conventions. What kind of document is CEDAW? What form of “binding” quality does it have? What kind of enforcement mechanisms? Does the characterization of CEDAW vary depending on whether countries have joined the Optional Protocol?
- 3) Review the examples of national equality provisions and compare them to CEDAW. Who are “rightsholders” under these provisions? Ought CEDAW be understood as law outside of the nation-state, incorporated into it as domestic law, or not having the status of law?

Class Materials

1. Textual Commitments to Equality: International Instruments

Convention on the Elimination of all Forms of Discrimination Against Women (CEDAW) (1979).

Optional Protocol to the Convention on the Elimination of All Forms of Discrimination Against Women, Oct. 15, 1999, U.N. Doc. A/Res/54/4/15 (entered into force Dec. 2000).

States Parties (2004), *available at* <http://www.un.org/womenwatch/daw/cedaw/states.htm>.

Members of the CEDAW Committee (2004), *available at* <http://www.un.org/womenwatch/daw/cedaw/members.htm>.

Elizabeth Evatt, *Finding a Voice for Women’s Rights: The Early Days of CEDAW*, 34 GEO. WASH. INT’L L. REV. 515-53 (2002).

2. Reporting by Party-States and NGOs

Provisional Agenda, Committee on the Elimination of Discrimination against Women, Thirtieth session (Nov. 11, 2004), available at <http://www.un.org/womenwatch/daw/cedaw/cedaw32/ProvisionalAgendaAA.pdf> (read pgs. 1, 3-4, 8-12).

Canada, *CEDAW: Fifth Report of Canada, Covering the Period from April 1994 – March 1998*, U.N. Doc. CEDAW/C/CAN/5 (2002). Read selections.

Canada, *CEDAW: Fifth Periodic Report of States' Parties – Addendum*, U.N. Doc. CEDAW/C/CAN/5/Add.1 (December 30, 2002) available at http://www.canadianheritage.gc.ca/progs/pdp-hrp/docs/cedaw5/cedaw5part1_e.pdf.

Canada, *Review of Canada's Fifth Report on the Implementation of CEDAW: Responses by Canada to the Advance Written Questions of the Committee on the Elimination of Discrimination Against Women* (Part II, November 21, 2002), available at http://www.canadianheritage.gc.ca/progs/pdp-hrp/docs/cedaw5/5cedawcan2_e.pdf.

Canada, “Shadow Report” from Canadian Feminist Alliance for International Action to CEDAW, January 2003, available at <http://www.fafia-afai.org/Bplus5/natFAFIAreport012103.pdf>.

Ethiopia, *Fourth and Fifth Periodic Reports to CEDAW*, U.N. Doc. CEDAW/C/ETH/4-5 (Oct. 28, 2003).

CEDAW Committee examination of the 2004 Ethiopia Report, 645th and 646th meetings (Press Release WOM/1431), reprinted from www.un.org.

Note: I invite you to read the materials from Canada about which you know much more than I so that you can assess, from your own experiences, the role of reporting and the content of the reports.

For Class 3 [February 8] read:

Human Rights Agreements and the Challenge of Diversity

As you read:

- 1) How are practices that result in differential treatment of women and men justified? When are practices claimed to be religiously required, culturally necessary, or aspects of national sovereignty? How do the various forms of governance (the nation-state/ federations/ internationalism) interact with claims of religious, cultural or national practices?
- 2) When is gender equality perceived as a threat? to what?
- 3) How might one persuade those “inside” a cultural, national, or religious group that gender equality ought to be embraced? Who are the spokespersons for a group claiming that such a posture is exogenous and that it violates specified norms?

Class Materials

Illustrative Tensions

Patrick F. Fagan, *How U.N. Conventions on Women's and Children's Rights Undermine Family, Religion, and Sovereignty*, The Heritage Foundation BACKGROUNDER, Executive Summary & 1-21 (2001) available at <http://www.heritage.org/Research/InternationalOrganizations/BG1407.cfm>.

Joel Richard Paul, *Cultural Resistance to Global Governance*, 22 MICH. J. INT. L. 1-19, 27-43, 74-84 (2000).

The Indian Civil Rights Act of 1968, 25 U.S.C. § 1301-1303.

Santa Clara Pueblo v. Martinez, 436 U.S. 49 (1978) (excerpted from OWEN FISS & JUDITH RESNIK, *ADJUDICATION AND ITS ALTERNATIVES* 1109-21 (2003)).

Excerpts from the briefs in *Santa Clara Pueblo*

Judith Resnik, *Dependent Sovereigns: Indian Tribes, States, and the Federal Courts*, 56 U. CHI. L. REV. 671, 702-727 (1989).

Susan Okin, *Is MULTICULTURALISM BAD FOR WOMEN?* 9-24 (1999).

Jennifer Nedelsky, *Communities of Judgment and Human Rights*, 1(2) Theoretical Inquiries in Law 245-82 (July 2000), slightly revised for Dilemmas of Global Justice conference, University of Toronto (April 2003).

II: POLITICAL EQUALITY

Ought democracies structure voting rules to take women's inequality into account? If so, how? If not, what are other mechanisms to enable political participation? What is the relationship between voting and access to political and economic power? What do numbers tell us? Ought legal intervention occur through mandating women to be decisionmakers as compared to mandating that decisionmakers take women into account?

For Class 4 [February 9] read:

Parite: Practice and Theory

Francoise Gaspard, *The French Parite Movement*, Ch. 4, in Klausen & Maier, *supra*.

Jane Mansbridge, *The Descriptive Political Representation of Gender: An Anti-Essentialist Argument*, Ch. 2, in Klausen & Maier, *supra*.

Pippa Norris, *Breaking the Barriers: Positive Discrimination Policies for Women*, Ch. 6, pages 89-95, in Klausen & Maier, *supra*.

Hege Skjeie, *Quotas, Parity, and the Discursive Dangers of Difference*, Ch. 10, in Klausen & Maier, *supra*.

Jytte Klausen, *When Women Voted for the Right: Lessons for Today from the Conservative Gender Gap*, Ch. 14, in Klausen & Maier, *supra*.

Uganda Constitution, National Objectives and Directive Principles, esp. art. VI, *reprinted from* <http://www.government.go.ug/constitution/index.php>.

Raghabendra Chattopadhyay & Esther Duflo, *Women as Policy Makers: Evidence from a Randomized Policy Experiment in India*, NBER Working Paper No. 8615 (Oct. 2001), *reprinted from* <http://www.nber.org/paper/w8615>. Read pages 1-5, 15-21 (appendices included for reference).

E-mail from CWDS Library (cwdslib@alpha.nic.in), Board Manners, Mar. 13, 2002 (concerning Norway's requirements for women on corporate boards).

III: CIVIL AND SOCIAL EQUALITY

What role do markets and households play in gender subordination? What government regulations and laws could and/or should be devised to intervene?

For Class 5 [February 10] read:
Wage and Nonwage Work and Caregiving Roles

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America, UAW v. Johnson Controls, Inc., 499 U.S. 187 (1991).

ICFTU, Equality through Pay Equity (March 2003) (pay gaps outside the U.S.; the ILO Convention).

Mary Ann Mason & Marc Goulden, Marriage and Baby Blues: Re-defining Gender Equity (Oct. 30, 2003) *reprinted from* <http://gradresearch.berkeley.edu/marriagebabyblues.pdf>.

Emily Bazelon & Judith Resnik, *At Home and Work, Still a Man's World*, L.A. TIMES, January 2, 2004 at B13.

Arnlaug Leira, *Caring as Social Right: Cash for Child Care and Daddy Leave*, 5 SOC. POL. 362 (1998).

George Badeck and Others, Hessische Ministerpräsident & Landesanwalt beim Strafgerichtshof des Landes Hessen-Germany, 2000 ECJ CELEX Lexis 7739.

IV: VIOLENCE AS INEQUALITY AND AS A SOURCE OF EQUALITY

Women in (Potentially) Violent Roles: The Military, Police, and the Militia

What is the relationship between violence and the meaning of gender? Who controls the legitimate use of violence in society? What constrains a broad understanding of violence as a central mechanism of inequality? As a source of production of the meaning of gender? How do the different sites of violence and women's and men's different roles in those sites affect our understanding of violence and of gender?

For Class 6 [February 11] read:

April Carter, *Women, Military Service, and Citizenship, in GENDER POLITICS & CITIZENSHIP IN THE 1990s*, Ch. 6 (Barbara Sullivan and Gillian Whitehouse eds., 1996).

David H. Hackworth, *War and the Second Sex*, NEWSWEEK, Aug. 5, 1991, at 24.

Kreil v. Germany, Case C 285/98, 2000 ECR I-00069, reprinted from
<http://www.europa.eu.int>.

Dory v. Germany, Case C-186/01, 2003 ECJ CELEX LEXIS 99, reprinted from
<http://www.europa.eu.int>.

United Nations Security Council Resolution 1325 (adopted Oct. 31, 2000) available at
http://www.un.org/events/res_1325e.pdf.

Carol Cohn, *Feminist Peacekeeping*, THE WOMEN'S REVIEW OF BOOKS (February 2004).

Katha Pollitt, *Are Women Morally Superior to Men?*, THE NATION, Dec. 28, 1992, at 799.

Judith Resnik, "Sovereignty and Sisterhood: American Lawmakers' Responses to Twentieth Century Women's Rights Claims," in *Sisterhood and Slavery* (Yale University Press, forthcoming 2005).

CONCLUSION

Ursula K. Le Guin, "She Unnames Them," in *BUFFALO GALS AND OTHER ANIMAL PRESENCES* (1987).

